IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/10/2002

CORAM

THE HONOURABLE MR.JUSTICE D.MURUGESAN

Crl.O.P.No.4728 of 2001

A.Kathiresan .. Petitioner

-Vs-

State rep. by the
Inspector of Police
Economic Offences Wing-II
Madurai .. Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to F.I.R. in Crime No.1 of 2000 on the file of the E.O.W.II, Madurai and quash the same.

For Petitioner :: Mr.M.Ravindran, Sr.Counsel
for Mr.V.Viswanathan

For Respondent :: Mr.K.Abudukumar Rajarathinam
Government Advocate(Crl.Side)
Dr.V.Suresh for Intervenor

:ORDER

The scope of inherent power of this Court under Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred to as "The Code") to quash the F.I.R., is not a new question for consideration by this Court, as this Court as well as the Apex Court had number of occasions to consider the said question. In the present petition, the petitioner who has been arrayed as the second accused in Crime No.1 of 2 000 on the file of the respondent police raises the same question and seeks to quash the F.I.R. arrayed him as an accused.

2. Before considering the contentions of the petitioner in support of the petition, it would be proper for this Court to consider first the inherent power of this Court under Section 482 of "The Code" to quash the F.I.R. A F.I.R. registered under Section 154 of "The Code" is only an initiation to move the machinery of investigation and to investigate into cognizable offence. The power of investigation into such cognizable offence is also contemplated under Section 156 of " The Code" and the procedure for investigation is contemplated under Section 157. Time and again this Court as well as the Apex Court have held that the Court should not interfere in the

process of investigation, as the power shall vest only with the Investigating Officer as to how the investigation is to be conducted. Such a power of investigation cannot be interfered by quashing the F.I.R., except in rarest of rare cases and exercise of such power is only an exception. The question of such inherent power of the High Court under Section 482 of "The Code" to quash the F.I.R. came up for consideration before the Apex Court on number of occasions. In the recent judgment of the Apex Court in "STATE OF KARNATAKA v. M.DEVENDRAPPA AND ANOTHER (2002 SCC (Crl.) 539)", the Apex Court has held that the exercise of power under Section 482 of "The Code" is an exception and not a rule and the section does not confer any new powers on the High Court as it only saves the inherent power the High Court possessed before the enactment of the Code. The said section envisages three circumstances under which the inherent jurisdiction could be exercised viz., (1) to give effect to an order under the Code, (2) to prevent abuse of the process of Court and (3) to otherwise secure the ends of justice. Therefore, Courts have inherent powers apart from express provisions of law which are necessary for proper discharge of certain duties imposed upon them by law and such powers are necessary to do the right and to undo the wrong in the course of administration of justice. The Apex Court has also held that while exercising the powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. Such powers could be exercised when no offence is disclosed by the complaint and it is also permissible for the Court to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

3. A similar question came up for consideration before the Apex Court in the judgment in "S.M.DATTA v. STATE OF GUJARAT AND ANOTHER (2001 (7) SCC 659)" where in the Apex Court has held that normal rule is not to interfere in the criminal proceedings, except when the complaint or F.I.R. broadly read, does not disclose any offence that can be termed as abuse of process of law. The Apex Court also has held that in the event of commission of a cognizable offence and an offence standing disclosed in the first information report, interest of justice requires further investigation by the investigating agency. Investigation of an offence is within the exclusive domain of the police and not the law courts. In the event of disclosure of an offence, it is the duty incumbent to investigate into the offence and bring the offender to book in order to serve the cause of justice. The Apex Court has also emphasized a clear and well-defined area of operation and demarcated function in the field of investigation of crimes and its subsequent adjudication.

4. In this context, it may be relevant to refer to the judgment of the Apex Court in "STATE OF HARYANA v. BHAJAN LAL (1992 (SUPP.) 1 SCC 335)". After a detailed discussion, the Apex Court has laid down the law as to the extraordinary power of the High Court under Article 22 6 of the Constitution of India as well the inherent power of this Court under Section 482 of "The Code" in paragraph 108 of the judgment which reads as under:-
"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this

Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1.Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2.Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3.Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4.Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5.Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6.Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7.Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In the same judgment, in paragraph 109, the Apex Court has observed as follows:-

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

5. On an analysis of the above law laid down by the Apex Court, it is well settled now that as and when the complaint is received, the same is registered as a F.I.R. in the case of cognizable offence and the moment the F.I.R. is registered, the power to investigate into the said complaint shall

vest with the investigating machinery. Such power to investigate is embedded in the scheme of the Code as only after investigation and only when the Investigating Officer is of the opinion that the accused shall be prosecuted, final report is filed. The process of investigation assumes much importance only in the said context as otherwise the very system of investigating into a complaint will be frustrated. Courts therefore should be cautious while it is called upon to interfere in the process of investigation. Of course, the inherent power of the Court to interfere in the process of investigation is not affected when the complaint does not disclose any offence at all, and consequently the person accused in the said complaint is put to unnecessary hardship by interrogation. It further envisages that while exercising the inherent power to quash a F.I.R., only in rarest of rare cases the said power should be exercised as such exercise of power would be an exceptional one. The High Court is also entitled to look into the complaint to find out as to whether any offence is made out against the accused. However, a caution note is to be struck and the High Court should not weigh the pros and cons of the prosecution case and cannot also go into the merit of rival versions and decide the same for the purpose of quashing the F.I.R.

6. With the above settled law in mind, the facts of the present case have to be considered. The case of the prosecution is as follows. During the year 1992, some of the Government servants and the employees and officers of Madurai City Municipal Corporation formed an association for purchase of plots and construction of houses. The said association consisted over 402 Government servants. An agreement dated 4.3.92 was entered by the office bearers of the association with A-1 by name Karuppiah to purchase 24 acres of land at the cost of Rs.59,54,701/-. The said amount was paid during the period 1992-93. The cost of the plot was fixed at Rs.2,500/- per cent. Though the entire amount was paid, the said Karuppiah allotted only 77 plots consisting of 5 cents of each plot for the total value of Rs.12 lakhs only. A complaint was registered before the District Crime Branch, Madurai on 20.5.96 against the said Karuppiah. On 12.8.96 a settlement was arrived before the Inspector of City Crime Branch, Madurai between the said Karuppiah and the office bearers. Pursuant to the said settlement, the said Karuppiah agreed to repay twice the value of the amount already given to him by the members of the housing committee. It was also agreed that out of 77 plots, owners of 53 plots will reconvey the lands in favour of the associates and nominees of Karuppiah. It was also agreed that the said Karuppiah would immediately repay 40% of the amount paid and the remaining 60% would be repaid thereafter. It is at this juncture the petitioner came to the picture. Pursuant to the above agreement with Karuppiah, 53 plots were sold to the petitioner (A-2) viz., A.Kathiresan Chettiar. On 18.9.97 the petitioner also executed a vardamana letter undertaking to comply with the terms and conditions contained in the agreement dated 12.8.96 by Karuppiah with the office bearers of the housing committee. By the said letter he made the members of the committee to believe that on reconveyance of the 53 plots, the members would be repaid double the amount already paid, of course in instalments. Since the said undertaking was not complied with and there was a breach of trust, a complaint was lodged on 6.5.2000 not only against the said Karuppiah, but also against the present petitioner.

7. Mr.M.Ravindran, learned senior counsel appearing for the petitioner would contend that except a bald statement that the petitioner is a benami of A-1 Karuppiah, no material is available to implicate the petitioner for the offence. The averments in the F.I.R. does not disclose any offence, more particularly, under Section 406 and 420 of IPC or under Section 5 of the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997. Pursuant to the agreement entered into between Karuppiah and the members of the housing committee, the said Karuppiah has approached the Sub Court, Madurai in O.S.No.425 of 1996 for enforcement of the agreement. While the same was pending, a complaint dated 20.5.96 was given before the District Crime Branch, Madurai and on 12.8.96 an agreement was entered by Karuppiah and the members of the committee. Thereafter the said Karuppiah approached the petitioner for purchase of the plots which are to be reconveyed by the members of the housing committee. Only on the said context, the petitioner had given the vardamana letter dated 18.9 .97 and had also paid a sum of Rs.72 lakhs to the said Karuppiah. Except the same, the petitioner never involved in any of the transaction relating to the plots in question and he did not receive any amount from any of the members of the housing committee. Hence, no offence is made out in the F.I.R. against the petitioner and therefore the same is liable to be quashed.

8. In the context of above arguments, it will be relevant to refer to the averments in the F.I.R. A reading of the F.I.R. discloses that though the petitioner had come into picture on and after 18.9.97, there was an undertaking given by him to the effect that the amount will be paid to the members of the committee for the plots reconveyed, more particularly, the value of 53 plots. The members of the housing committee were therefore made to believe that they would be repaid twice the value of the plots reconveyed. Instead of doing the same, the petitioner plotted the entire 24 acres of land in the name of Poombuhar Nagar North Extension. Section 405 of IPC contemplates an offence on the part of a person who being in any manner entrusted with the property or with any dominion over the property dishonestly misappropriates or converts to his own use that property????commits criminal breach of trust. Section 420 of IPC contemplates an offence of cheating by a person who dishonestly induces the person deceived to deliver any property to any person?

9. A plain reading of the First Information Report, prima facie, discloses the offence under Sections 406 and 420 IPC. The contents of the complaint as disclosed in the F.I.R. cannot be weighed by this Court as it is a matter for investigation and for further adjudication, if necessary. The law on the subject is very clear that when the F. I.R. discloses an element of offence, this Court shall not exercise the inherent powers under Section 482 and quash the F.I.R. Though the petitioner claims that he came into picture only in the year 1997 when in fact the offence was committed much prior to that by A-1 alone, I am unable to agree with the said submission of the learned senior counsel for the reason that subsequent to the agreement dated 18.9.97, the petitioner is said to have plotted the surrendered plots as well the plots which were purchased for the benefit of the members of the housing committee with the fund collected from them. When such allegation of criminal breach of trust and cheating is pleaded, this Court shall not embark

upon the pros and cons of the allegation and decide the same on merits while considering the petition for quashing of a F.I.R. Hence, for the above reasons, I am unable to accept the submission made by the learned senior counsel for petitioner.

10. It is next contended by the learned senior counsel for petitioner that there is no transaction by any financial institution as contemplated under the Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997 and Section 5 of the Act is not attracted in this case and therefore the offence under the provisions of the said Act is not made out. Again this is a question of fact and has to be investigated upon to find out as to the applicability of the said Act to the transaction in question.

11. Hence, for all the above reasons, I am unable to agree with any of the submissions made by the learned counsel for petitioner. Accordingly, I find no merit in the petition seeking to quash the F.I.R. in Crime No.1 of 2000 on the file of the Economic Offences Wing-II, Madurai. Accordingly, the petition fails and the same is dismissed. Consequently, Crl.M.P.No.1722 is dismissed and Crl.M.P.No.8812 of 2001 is ordered. The observations made in this order shall not affect the right of the parties in any of the proceedings, if initiated, after the investigation is over.

Index: Yes
Internet: Yes

To

The Inspector of Police
Economic Offences Wing-II
Madurai

Order in
Crl.O.P.No.4728 of 2001

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